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UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY

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October 7, 1968

MEMORANDUM

TO: ACDA/GC - *Mr. Bunn*

FROM: ACDA/ST - Robert S. Rochlin *R.S.R.*

SUBJECT: Safeguards Agreements under Non-Proliferation Treaty (U)

The purpose of this memorandum is to summarize the current thinking of the IAEA staff regarding the nature of the safeguards agreements which the IAEA will negotiate with NPT Parties to implement Article III of the NPT. The information herein is based on conversations with various IAEA staff members in Vienna between September 23 and October 1, 1968.

The IAEA Secretariat has formed an "NPT Working Group," chaired by David Fischer, Director of the Division of External Liaison and Protocol. Benjamin Sanders, Department of Safeguards and Inspection, serves as executive secretary of the Working Group. The other members are:

Frank Arsenault, Safeguards Department
Werner Boulanger, Legal Division
Metin Camcigil, Legal Division
Gunnar Hambræus, Administration Department
Slobodan Nakicenovic, Safeguards Department
Mrs. Merle Opelz, External Liaison Division
Reinhard Rainer, Legal Division
Rustom Schroff, Safeguards Department
Robert Skjoeldebrand, Special Assistant to the
Director General
Vladimir Shmelev, Safeguards Department
Shigefumi Tamiya, Safeguards Department

DECLASSIFIED BY/RELEASE AUTHORITY:

KATHY ALLEGRONE, SENIOR REVIEWER ~~LIMITED OFFICIAL USE~~

U.S. DEPARTMENT OF STATE

RELEASE DECISION: RELEASE IN FULL

DATE: JANUARY 15, 2020

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The draft agreement dated September 2 (enclosed with Vienna Airgram A-1456) and a later redraft dated September 21 (enclosed herewith) were prepared by Rainer. They were submitted to the NPT Working Group as working drafts, but have not been endorsed by the Group and, in fact, do not fully reflect its current views.

On the basis of comments made by Fischer and other IAEA staff members at meetings of the Working Group on September 23, September 26, and October 1,* there seems to be preliminary general agreement on the format and on many elements of a model agreement, but the Group is still grappling with a number of unresolved issues.

Fischer envisages that the agreements would be uniform for all parties (with the possible exception of Euratom States). Each agreement would consist of two parts. The first part would embody basic obligations, and would be written in such a way that it would not have to be amended for at least 25 years. The second part would be an annex to the basic agreement, and would prescribe safeguards procedures. Fischer suggested that any necessary amendments to the annex might be handled through executive agreements with the various governments and not require resubmission to their parliaments. The annex would incorporate by reference the relevant provisions of the Safeguards Document and Inspectors Document to the greatest extent possible. Only those provisions which are not applicable in the NPT situation would be rewritten. Arsenault is engaged in drafting appropriate provisions for such an annex.

Fischer believes the present Safeguards Document and Inspectors Document should be utilized to the greatest

* The October 1 meeting was attended by General Crowson and Mr. Bengelsdorf of the U.S. AEC, Mr. Van Doren and Dr. Rochlin of ACDA, and Dr. Vanderryn of the U.S. Mission.

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extent possible. He recognizes that, if it appeared that basic revisions were being suggested for the IAEA safeguards system, this might provide an excuse for further delay in countries which have not yet signed the NPT.

Arsenault pointed out that various countries will seek explanations, clarifications, and interpretations of the Safeguards Document. I suggested that such material could be issued by the IAEA as a separate information circular, which would not have to be negotiated with governments. Arsenault liked that approach, provided that the circular would have formal approval of the Board of Governors. Without such approval, he felt, the Secretariat would have difficulty getting its interpretations accepted by certain states. He thought such a circular should be issued before formal negotiations of agreements commence.

In the following discussion, section numbers refer to the attached September 21 draft agreement.

Section 2 reiterates an obligation in the NPT, making it an obligation which extends also to the IAEA. Rainer said it was important to have this basic obligation in the agreement so that a basis would be laid for the agreement's provisions on non-compliance (Section 13) and settlement of disputes (Section 19). Van Doren and Sanders pointed out that it would probably be difficult to get many governments to undertake this obligation to an additional party, and that the desired result might better be obtained by including a reference to this NPT obligation in the preamble to the agreement.

The Working Group recognizes that the NPT requires safeguards on nuclear material in peaceful activities only. They also wish to make clear in the agreement that the Agency has no obligation to safeguard any nuclear material which has not been reported to the Agency by the government.

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Nevertheless, some members of the Group favor inclusion of a requirement that the government shall report to the Agency all nuclear material, peaceful or not, and then withdraw from safeguards any material to be used for non-peaceful purposes. In his September 2 draft, Rainer worded Section 5 in such a way as to require notification of all military nuclear material except for military imports. Section 11 of the September 21 draft provides for termination of safeguards for material withdrawn for military non-weapon purposes (and for non-nuclear purposes).

There was some discussion on how to clarify the safeguards status of nuclear material in transit from one state to another, particularly when carried by ship or airplane. Some members of the Group felt that using the point of transfer of title would not necessarily provide the Agency with an adequate basis for safeguarding such material.

There was some discussion as to whether the Agency should attempt in these agreements to enforce paragraph 2 of Article III of the NPT, along the lines of Section 12 of the attached September 21 draft. Mr. Van Doren pointed out that Section 12 fails to provide properly for the transition period called for in paragraph 4 of Article III. He reiterated the U.S. interpretation stated February 21, 1968, in Geneva (ENDC/PV 368, Section 48), that paragraph 2 of Article III does not contain an obligation to interrupt transfers during the transition period.

Mr. Rainer pointed out that his Section 13 is not merely a restatement of the provisions of the Statute, but introduces a grace period of "a reasonable time" before sanctions must be applied by the Board.

Section 22 provides for the suspension of trilateral safeguards agreements while the NPT agreement is in force.

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There was considerable discussion of the fact that the trilaterals (and Agency project agreements also) ban all military uses of nuclear material, while the NPT bans only nuclear weapon manufacture. Arsenault pointed out that keeping separate accounts for nuclear material from the U.S. and other trilateral suppliers would become an increasingly heavy accounting burden, both for the states and for the Agency. It would be highly desirable from that point of view if uniform safeguards could be applied to all nuclear material in peaceful activities regardless of its origin.

It was pointed out that some NPT Parties, such as Sweden, may be willing to accept not only the NPT obligations but a broader obligation to the Agency not to use nuclear material for any military purpose. It was generally agreed that for such states a supplementary agreement with the IAEA to that effect could be signed.

In a private discussion with Arsenault, he favored consolidated quarterly reports from each country, rather than the various reporting frequencies for large and small plants which are now specified in the Safeguards Document. In his view, design reviews early enough to affect plant design are unattainable; he believes the only value of design reviews is to facilitate planning of inspection procedures. He identified Sections 31, 60, and 68 of the Safeguards Document as examples of provisions which would need to be clarified or adapted for the NPT situation.

Allan McKnight emphasized the importance of giving the Agency the explicit right to publish general information on the locations and nature of all nuclear facilities under Agency safeguards, and perhaps the total quantity of nuclear material at each location. He considered this important in order to permit other states to compare their intelligence information with the declarations to the Agency in order to provide assurance that the declarations

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were complete. It was felt that Section 14B of the Safeguards Document might not be quite adequate for this purpose.

There was some discussion as to whether safeguards should be applied to a facility, such as a reactor, from which all nuclear material has been removed. Arsenault pointed out the desirability of providing some mechanism by which the Agency could be assured that such a shutdown facility was not being secretly reactivated. It was pointed out that such facilities could be assumed by the Agency as possibly "to contain" nuclear materials under Section 29 of the Safeguards Document, unless the state formally notified the Agency to the contrary. It was also pointed out that in many cases states might be quite willing to allow the Agency to put seals on such a facility, and allow the seals to be checked periodically, in order to dispel any suspicions that might otherwise arise.

Regarding Section 19, Rainer pointed out that when many different arbitral tribunals are set up, their decisions may not be mutually compatible. He also raised a question as to what types of decisions of the Board of Governors could be challenged by arbitral tribunals.

In a separate meeting with Bernard Sharpe, he raised two topics not directly related to the agreements. First, he raised the question as to how the Agency should extend safeguards to nuclear facilities in the U.S. and U.K., a subject for which he has been assigned planning responsibility. He said his current thinking was along the following lines: The Agency should safeguard only a rather small fraction of all U.S. nuclear facilities at any given time. However, to avoid charges of discrimination among various U.S. firms, he envisioned a rotation system in which the Agency would safeguard selected facilities for only two or three years and then safeguard facilities of other firms, so as to distribute any possible burden equitably among all

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U.S. firms. He also mentioned that the Agency could profitably utilize these safeguards at U.S. facilities as a training ground for new inspectors. Sharpe said he hoped to discuss this subject further with the U.S. AEC in Washington in early November.

The other topic Sharpe raised was how IAEA inspectors could recognize a situation in which safeguarded plutonium or uranium was being used to make nuclear weapons. He suggested that the U.S. and U.K. provide to the IAEA whatever unclassified information on nuclear weapons design they could make available to assist inspectors to recognize such situations.

Enclosure:

Draft Agreement dated 9/21/68

ACDA/ST:RSRochlin:aaj
10/7/68

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